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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,926	01/16/2004	Maurice Eduardus Theodorus van Esbroeck	1063-0107PUS1	6540

2292 7590 04/07/2006

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EXAMINER

PRICE, RICHARD THOMAS JR

ART UNIT PAPER NUMBER

3643

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/758,926	Applicant(s) VAN ESBROECK ET AL.	
	Examiner Thomas Price	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-41 and 44 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Information Disclosure Statement

The Information Disclosure Statement filed on 02-28-2005 is considered. All of the references have been initialed by the Examiner and a copy is submitted herewith.

Priority

The Applicant claims priority under 35 U.S.C. 119(a) on the The Netherlands Application No. 1018566, filed on July 17, 2001. At this time, the Examiner acknowledges this claim to priority, and on 03-10-2006, a certified copy of the Netherlands application has been received.

Election/Restrictions

In the Applicant's response received on 01/23/2006, the Applicant correctly argues that the Application is not filed on 35 U.S.C. 371 (National Phase Entry into the U.S.). Thus, the lack of unity mailed on 08/18/2005 is not proper and is hereby withdraw. However, the following Restriction is deemed to be proper.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-43 are, drawn to a method for processing poultry, classified in class 452, subclass 58.
- II. Claim 44 is, drawn to a device for processing poultry, classified in class 452, subclass 58.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process, supplying, stunning, placing, killing and removing

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the feather, and exposing the poultry to an electrical stimulation, can be practiced by hand.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

IF THE APPLICANT ELECTS GROUP I, THEN THE FOLLOWING ELECTION OF SPECIES REQUIREMENT IS APPLICABLE.

This application contains claims directed to the following patentably distinct species:

Species IA as claimed in claims 1-35 and 38-41.

Species IB as claimed in claims 36 and 37.

The species are independent or distinct because each species does not broadly read on the other species, and claim 1 is directed to a method for processing or tenderizing poultry, while claim 36 is directed to a method for evaluating the tenderness of a meat part of a slaughtered animal.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

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is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

IF THE APPLICANT ELECTS SPECIES IA, THEN THE FOLLOWING ELECTION OF SUB-SPECIES REQUIREMENT IS APPLICABLE.

This application contains claims directed to the following patentably distinct species:

Species IA-1 as claimed in claims 2 and 16-20.

Species IA-2 as claimed in claims 3-8.

Species IA-3 as claimed in claims 9-15.

Species IA-4 as claimed in claims 21 and 22.

Species IA-5 as claimed in claims 23-27.

Species IA-6 as claimed in claim 28.

Species IA-7 as claimed in claims 29-41.

The species are independent or distinct because the claims forming the species are considered to be a change in scope, as opposed to further limiting the independent claim 1.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is considered to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

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readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).


Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 571-272-6892. The examiner can normally be reached on M-F from 6:30a.m. to 3:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas Price
Primary Examiner GAU: 3643
April 03, 2006

rtp